Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 95-399

In the Matter of	)	
	)	
Tariff Filing Requirements for Nondominant Common Carriers	)	CC Docket No. 93-36
	)	

ORDER

Adopted: September 18, 1995; Released: September 27, 1995

By the Commission:

I. INTRODUCTION

1. On January 20, 1995, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's *Nondominant Filing Order* [1] that, *inter alia*, permitted domestic nondominant common carriers to file tariffs containing reasonable ranges of rates, as opposed to fixed rates.[2] The court determined that the range of rates provision in the Commission's Rules[3] violated Section 203(a) of the Communications Act of 1934 (Act), as amended,[4] which requires every common carrier to file "schedules showing all charges."[5] Although the court's opinion in *Southwestern Bell v. FCC* vacated the entire *Nondominant Filing Order*, it addressed only the lawfulness of the range of rates provision. For the most part, petitioners did not challenge the Commission's other streamlined tariff filing rules

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[1] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752 (1993) (*Nondominant Filing Order*).

[2] Southwestern Bell Corporation v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell v. FCC*).

[3] *See* 47 C.F.R. § 61.22(b).

[4] 47 U.S.C. § 203(a).

[5] *Southwestern Bell v. FCC*, 43 F.3d at 1520.

adopted in the *Nondominant Filing Order*,[6] and the court did not rule on whether these rules are inconsistent with the Act.[7]

2. We construe the court's decision in *Southwestern Bell v. FCC* to invalidate only the range of rates provision adopted in the *Nondominant Filing Order*. Accordingly, this Order eliminates that provision from the Commission's Rules, and reinstates those tariff filing requirements adopted in the *Nondominant Filing Order* that were not addressed in the court's decision vacating that Order. We also consider in this Order a petition for partial reconsideration of the *Nondominant Filing Order* filed by the Ad Hoc Telecommunications Users Committee (AdHoc) and an application for stay of a portion of that Order filed by AT&T Communications (AT&T). Finally, this Order amends Section 43.51 of the Commission's Rules,[8] to delete references to the Commission's forbearance policy that are inconsistent with earlier court decisions vacating that policy[9] and to implement changes made by a 1993 *Erratum* that were erroneously omitted from the *Code of Federal Regulations*.[10]

II. BACKGROUND

3. On November 13, 1992, the U.S. Court of Appeals for the D.C. Circuit, in reviewing a Commission order disposing of a complaint filed by AT&T against MCI Telecommunications Corporation (MCI),[11] vacated the Commission's long-standing

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[6] Petitioners AT&T, Bell Atlantic Telephone Companies, New England Telephone Company, and New York Telephone Company challenged only the range of rates rule adopted in the *Nondominant Filing Order*. Southwestern Bell's appeal was based on the Commission's distinction between dominant and nondominant carriers. The court did not reach Southwestern Bell's claim because it determined as a preliminary matter that the Commission lacked the authority to modify the statutory requirement in Section 203(a) of the Act, 47 U.S.C. § 203(a), that carriers file "schedules showing all charges."

[7] 47 U.S.C. § 201 *et seq.*

[8] 47 C.F.R. § 43.51.

[9] *See* MCI Telecommunications Corp. v. American Tel. & Tel. Co., -- U.S. --, 114 S.Ct. 2223 (1994); *see also*, American Tel. & Tel. Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, MCI Telecommunications Corp. v. American Tel. & Tel. Co., -- U.S. --, 113 S.Ct. 3020 (1993).

[10] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Erratum, released Aug. 31, 1993 (*Erratum*).

[11] American Tel. & Tel. Co., v. FCC, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, MCI Telecommunications Corp. v. AT&T, -- U.S. --, 113 S.Ct. 3020 (1993). AT&T's complaint alleged that the Commission's permissive detariffing policy, as authorized by

"forbearance" policy. Under these rules, adopted in our *Competitive Carrier Decisions*,[12] "nondominant" common carriers were not required, *inter alia*, to file interstate tariffs.[13] On February 19, 1993, the Commission issued a Notice of Proposed Rulemaking[14] in response to

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Policy and Rules Concerning Rates for Competitive Common Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Fourth Report and Order, 95 FCC 2d 554 (1983), violated Sections 203(a) and (c) of the Communications Act, 47 U.S.C. §§ 203(a), (c). The court determined that the Commission improperly dismissed the complaint and further held that the permissive detariffing policy violated the Act. The Commission subsequently adopted a permissive detariffing rule in Tariff Filing Requirements for Interstate Common Carriers, CC Docket No. 92-13, Report and Order, 7 FCC Rcd 8072 (1992). The D.C. Circuit summarily reversed the Commission's Order adopting the permissive detariffing rule. *See* American Tel. & Tel. Co. v. FCC, Nos. 92-1628, 92-1666 (D.C. Cir. June 4, 1993) (per curiam), *cert. granted*, MCI Telecommunications Corp. v. American Tel. & Tel. Co., -- U.S. --, 114 S.Ct. 543 (1993). The Supreme Court affirmed the D.C. Circuit's decision to vacate the Order in MCI Telecommunications Corp. v. American Tel. & Tel. Co., -- U.S. --, 114 S.Ct. 2223 (1994) (*MCI v. AT&T*).

[12] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982), *recon.*, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), *vacated*, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, MCI Telecommunications Corp. v. AT&T, -- U.S. --, 113 S.Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984), *recon.*, 59 Rad. Reg. 2d (P&F) 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd*, MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (collectively, *Competitive Carrier Decisions*).

[13] A "nondominant" common carrier does not possess the market power necessary to sustain prices either unreasonably above or below costs. The Commission has, over the years, classified various carriers as nondominant. Because such carriers generally lack the market power to charge rates or impose conditions of service that would contravene the Act, the Commission considers their tariff filings to be presumptively lawful. A carrier is considered to be dominant if it has market power (*i.e.*, the power to control price). *See Competitive Carrier Decisions*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 10 (1980).

[14] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Notice of Proposed Rulemaking, 8 FCC Rcd 1395 (1993) (*Nondominant Filing NPRM*).

the court's invalidation of our forbearance policy. Generally, the *Nondominant Filing NPRM* proposed significantly streamlined tariff regulation for domestic nondominant common carriers previously subject to forbearance.

4. The Commission subsequently adopted the proposed streamlined tariff filing procedures in the *Nondominant Filing Order*, thereby creating a more flexible tariff filing process for domestic nondominant common carriers.[15] The Commission reasoned, as it had in its previous efforts to relax the tariff filing requirements for nondominant common carriers, that significantly streamlined filing requirements for such carriers serve the public interest by promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets, and enabling firms to respond quickly to market trends.[16]

5. The rules adopted in the *Nondominant Filing Order* establish the form, content, and notice requirements for tariffs filed by domestic nondominant common carriers.[17] Specifically, Section 61.20 of the Commission's Rules details certain procedures domestic nondominant common carriers must follow to file tariffs.[18] Section 61.21 of the rules details the requirements for filing cover letters to accompany these tariffs.[19] Section 61.22 of the rules generally describes the composition of tariffs filed by domestic nondominant common carriers.[20] Under Section 61.22(a) and (c), domestic nondominant common carriers must submit tariff filings on clearly labelled diskettes, rather than on paper, and must make any tariff changes by refiling the entire tariff on a new diskette with the changed material included. As originally adopted, Section 61.22(b) of the rules requires carriers to include in all tariffs the carrier's name and the information required by Section 203 of the Act.[21] That subsection also allows carriers to express rates in a manner of the carrier's choosing, including a reasonable range of rates. Section 61.22(d) of the rules exempts domestic nondominant common carriers from the tariff composition requirements of Section 61.54.[22] Finally, Section 61.23 of the rules details the notice requirements for tariff

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[15] *See* 47 C.F.R. §§ 61.20 - 61.23.

[16] *Nondominant Filing Order*, 8 FCC Rcd at 6761.

[17] *See* 47 C.F.R. §§ 61.20, 61.21, 61.22, and 61.23.

[18] 47 C.F.R. § 61.20.

[19] 47 C.F.R. § 61.21.

[20] 47 C.F.R. § 61.22.

[21] 47 U.S.C. § 203.

[22] 47 C.F.R. § 61.54.

filings by domestic nondominant common carriers, and permits such carriers to file their interstate tariffs on one day's notice.[23]

6. Southwestern Bell Corporation and several other petitioners filed petitions for review of the *Nondominant Filing Order* with the U.S. Court of Appeals for the D.C. Circuit.[24] The court vacated the *Nondominant Filing Order* and expressly invalidated the Commission's rule that permits domestic nondominant common carriers to file tariffs containing rates expressed in any manner of the carrier's choosing, including as a reasonable range of rates.[25] The court determined that the range of rates provision in the Commission's Rules contravenes Section 203(a) of the Act,[26] which requires every common carrier to file "schedules showing all charges."[27] In light of the Supreme Court's recent holding that the Commission has only modest modification authority under Section 203(b) of the Act,[28] the court concluded that the Commission lacked authority under Section 203(b) to modify Section 203(a) to permit the filing of a range of rates in tariffs.[29] The court's decision in *Southwestern Bell v. FCC* thus requires domestic nondominant common carriers to refile with the Commission any tariffs containing rate ranges and to replace such rate ranges with specific rates.

7. Although the court's decision in *Southwestern Bell v. FCC* vacated the entire *Nondominant Filing Order*, the court's opinion addressed only the lawfulness of the Commission's range of rates rule. The petitioners did not challenge any of the other streamlined tariff filing rules adopted in the Order[30] and the court did not consider whether any of these rules are inconsistent with the Act.

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[23] 47 C.F.R. § 61.23.

[24] *Southwestern Bell v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995). Also, AT&T, Bell Atlantic Telephone Companies, New England Telephone and Telegraph Company, and New York Telephone Company jointly filed a petition for review of the *Nondominant Filing Order*.

[25] *Id.* at 1526.

[26] 47 U.S.C. § 203(a).

[27] *Southwestern Bell v. FCC*, 43 F.3d at 1520.

[28] *See MCI v. AT&T*, -- U.S. --, 114 S.Ct. 2223 (1994) (invalidating the Commission's permissive detariffing rule).

[29] *Southwestern Bell v. FCC*, 43 F.3d at 1526.

[30] *See* n. 6 *supra*.

III. DISCUSSION

A. Reinstatement of Streamlined Tariff Filing Procedures

8. In this Order, we consider the entire extensive record already assembled for the *Nondominant Filing NPRM* and *Nondominant Filing Order*. We find that the existing record supports our decision to reinstate those tariff filing rules which were not considered by the court, and find neither a policy reason nor a legal requirement to supplement the record before moving forward.

9. On the basis of the record developed in issuing both the *Nondominant Filing NPRM* and the *Nondominant Filing Order*, we conclude that significantly streamlined tariff filing requirements for nondominant common carriers continue substantially to serve the public interest by affording nondominant common carriers increased flexibility to meet their tariff filing obligations. We construe the court's decision in *Southwestern Bell v. FCC* as invalidating only the provision in the Commission's Rules permitting domestic nondominant common carriers to file reasonable ranges of rates in their tariffs; therefore, we remain free to reinstate all other tariff filing procedures adopted in the *Nondominant Filing Order,* and we now do so.

B. Pending Requests Related to the *Nondominant Filing Order*

1. AdHoc Petition for Partial Reconsideration

10. At the time of the court's review of the *Nondominant Filing Order*, a petition for partial reconsideration of the *Nondominant Filing Order*, filed by AdHoc, was pending before the Commission.[31] In its petition, AdHoc requested reconsideration of our determination that the possibility of nondominant carriers abrogating contracts under the "filed rate" doctrine did not warrant a longer notice period than one day, as urged by AdHoc and other parties.[32] Because we are reinstating the one-day notice provision, we consider here the arguments raised by AdHoc's petition.

11. In adopting the one-day notice rule in the *Nondominant Filing Order*, we stated, *inter alia*, that in light of emerging competition in the telecommunications

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[31] Petition of Ad Hoc Telecommunications Users Committee for Partial Reconsideration, CC Docket No. 93-36, filed on September 22, 1993. Pleadings in support of AdHoc's petition were filed by Citicorp, Customer Network Service Users Group, Information Industry Association, Aeronautical Radio, Inc., and American Petroleum Institute. MCI Telecommunications Corporation filed an opposition to AdHoc's petition.

[32] Under the "filed rate" or "tariff precedence" doctrine, tariffed rates are deemed to be the controlling legal rate. *See* Maislin Industries v. Primary Steel, Inc., 497 U.S. 116 (1990).

marketplace, and given that nondominant carriers lack market power, we believed it would be highly unlikely that a nondominant carrier would unilaterally raise contract rates in tariff filings. We stated that it would be unlikely that a carrier would take such an action because of the potential risk of harm to its reputation and position in the competitive telecommunications marketplace. We also stated that we believe large telecommunications users possess sufficient leverage in the market to discourage nondominant carriers from choosing a course of conduct harmful to the users' interests.[33]

12. In its petition, AdHoc argues that we erred in concluding that competition will be sufficient to enforce contracts and that, in fact, it is the legal enforceability of contracts that has served as the backbone in the development of the modern competitive markets. AdHoc and other parties maintain that available remedies are inadequate to protect users in the event that a carrier alters or abrogates pre-existing contracts through a subsequent tariff filing. These parties therefore request that we lengthen the notice period for tariff filings that would alter or abrogate existing long-term arrangements.[34] In addition, they urge us to adopt additional procedural requirements for such tariff filings, including: requiring carriers to provide customers advance notice of such filings, requiring carriers to identify the changes to long-term commitments proposed in such filings, suspending and investigating all such filings, and allowing users to terminate abrogated contracts without liability. The parties also request that we clarify that we would apply the "substantial cause" test in assessing the reasonableness of nondominant carriers' tariffs in both tariff review and complaint proceedings.[35] They further ask that the Commission apply contract law principles such as impossibility of performance, impracticability, and frustration of purpose, in determining whether there is substantial cause for a unilateral change to a contract-based tariff.

13. Earlier this year, we addressed the identical issues raised by AdHoc and other parties, and adopted certain of the parties' recommendations, in connection with our reconsideration of a 1991 decision that examined the state of competition in the interstate interexchange marketplace.[36] In the *Interexchange Order*, we found that most interexchange

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[33] *Nondominant Filing Order*, 8 FCC Rcd at 6757.

[34] The parties propose several notice periods varying from 14 to 120 days.

[35] We have previously stated that tariff revisions that alter material terms and conditions of a long-term contract may be unjust and unreasonable unless the carrier can show "substantial cause for change." RCA American Communications, Inc., 84 FCC 2d 353, 358 (1980); 86 FCC 2d 1197, 1201 (1981); 2 FCC Rcd 236 (1987) (*RCA Americom Decisions*).

[36] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991) (*Interexchange Order*); Order, 6 FCC Rcd 7255 (Com Car. Bur. 1991); Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991) (*Sua Sponte Reconsideration Order*); Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992) (*Reconsideration Order*); Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd

business services are subject to substantial competition.[37] Based on that conclusion, we further streamlined our regulation of most of AT&T's business services,[38] and authorized all interexchange carriers to offer service pursuant to individually negotiated contract rates that are generally available to similarly situated customers.[39] We noted in the *Interexchange Order* that tariff revisions that alter material terms and conditions of a pre-existing long-term contract may be unjust and unreasonable unless the carrier can show substantial cause for the change.[40] We stated, however, that we could not otherwise prevent carriers from altering carrier-customer contracts with inconsistent tariff filings.[41]

14. In petitions for reconsideration of the *Interexchange Order*, AdHoc and other parties sought clarification of our policy of applying the substantial cause test and proposed several procedural rules for unilateral modifications to contract-based tariffs.[42] In response to those petitions, we stated in the *February 1995 Interexchange Reconsideration Order* that, given the substantial competition that exists for contract-based tariffed services, we believe that there should be few, if any, incidents of unilateral changes to pre-existing contracts.[43] Nevertheless, we affirmed that we would apply the substantial cause test in the event AT&T did file a tariff that changed material terms of an existing contract, and that in applying the test we would consider that the original tariff terms were the product of negotiation and mutual agreement.[44] We also stated that commercial contract law principles are highly relevant to an assessment of whether a contract-based tariff revision is just and reasonable under the substantial cause test. We declined, however, to hold that those principles would provide definitive parameters for a substantial cause showing. Instead, we stated that we

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2659 (1993) (*March 1993 Order*); Second Report and Order, 8 FCC Rcd 3668 (1993) (*Second Report*); Memorandum Opinion and Order, 8 FCC Rcd 5046 (1993) (*Fresh Look Petition Order*); Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562 (1995) (*February 1995 Interexchange Reconsideration Order*).

[37] *Interexchange Order*, 6 FCC Rcd at 5881.

[38] *Id.* at 5893.

[39] *Id.* at 5897.

[40] *Id.* at 5898, n.155, citing *RCA Americom Decisions*.

[41] *Id.*, citing American Broadcasting Companies, Inc. v. FCC, 643 F.2d 818 (D.C. Cir. 1980).

[42] The parties' proposals were essentially the same as those advanced in AdHoc's petition for reconsideration of the *Nondominant Filing Order*.

[43] *February 1995 Interexchange Reconsideration Order*, 10 FCC Rcd at 4573.

[44] *Id.* at 4573-74.

would consider on a case-by-case basis, in light of all relevant circumstances, whether a substantial cause showing has been made.[45] We further said that we would also consider on a case-by-case basis whether to permit customers taking service under contract-based tariffs to terminate their contracts in the event the carrier made unilateral changes via subsequent tariff filings.[46]

15. Significantly, as requested by AdHoc in that proceeding, we also specified that the substantial cause test would apply to the contract-based tariffs of nondominant carriers.[47] While noting our holding in the *Nondominant Filing Order* that advance scrutiny of the interstate tariffs of nondominant carriers is unnecessary, we stated that "in the unlikely event of unilateral tariff modification by a nondominant carrier, we will apply the substantial cause test as described above in any post-effective tariff review or in a complaint proceeding."[48] We also stated that we would consider on a case-by-case basis whether to allow customers to terminate without liability contracts that were altered or abrogated by subsequent tariff filings.[49]

16. We continue to believe that the measures we adopted in the *February 1995 Interexchange Reconsideration Order* adequately safeguard the mutual enforceability of users' long-term contracts with nondominant carriers, and we therefore affirm the approach we adopted in that order. We also are unpersuaded of the need to lengthen the one-day notice period for nondominant carriers' tariff filings that alter previously existing long-term arrangements. AdHoc and the parties commenting on AdHoc's petition have not presented any new arguments that lead us to change our conclusion that it is unlikely, in today's competitive interexchange marketplace, that nondominant carriers will seek to alter contracts unilaterally through subsequent tariff filings. Nor have the petitioners presented any new arguments that undermine our conclusion that post-effective tariff review and our complaint process provide adequate means of redress for users in such unlikely situations. Moreover, we strengthened these remedies when we concluded in the *February 1995 Interexchange Reconsideration Order* that we would apply the substantial cause test to unilateral changes by nondominant carriers to contract-based tariffed services. For the foregoing reasons, we decline to adopt AdHoc's proposal for a lengthened notice period for tariff filings that modify or abrogate existing long-term contracts. In light of the policies adopted in the *February 1995 Interexchange Reconsideration Order* and our consideration there of the same proposals that are raised by AdHoc's petition in this matter, we do not find it necessary to

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[45] *Id.* at 4574.

[46] *Id.* at 4574.

[47] *Id.* at n.51.

[48] *Id.*

[49] *Id.*

take action on those proposals in this proceeding. Accordingly, AdHoc's petition for partial reconsideration is denied.

2. AT&T Application for Stay

17. On September 7, 1993, AT&T filed an application for stay of that portion of the *Nondominant Filing Order* that authorized nondominant carriers to file ranges of rates in their tariffs, pending appellate review of the Order.[50] In light of the court's ruling in *Southwestern Bell v. FCC*, AT&T's application for stay is moot. Accordingly, we dismiss AT&T's request.

C. Correction of Section 43.51

18. In addition to adopting tariff filing procedures for domestic nondominant common carriers in the *Nondominant Filing Order*, the Commission also amended the language of Section 43.51(a) of the rules, 47 C.F.R. § 43.51(a), regarding carrier-to-carrier contract filings. Specifically, we amended that rule section in response to the court's invalidation of our forbearance rules by deleting the specific reference to forbearance in the rule.[51] The amendments to Section 43.51(a) were subsequently corrected by an erratum.[52] The notice of that *Erratum* published in the *Federal Register*[53] on September 15, 1993, however, failed to incorporate the amendments to Section 43.51(a) made by the *Erratum*.[54] As a result, the text of Section 43.51(a), as corrected by the *Erratum*, does not appear in the *Code of Federal Regulations*.

19. Further notice and comment in these circumstances is unnecessary and not required by the Administrative Procedure Act,[55] as this portion of the Order is intended solely to correct an oversight in publication in the *Code of Federal Regulations*. We conclude that good cause exists to make this correction without public notice and comment

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[50] AT&T Application for Stay of Order Pending Appellate Review, CC Docket No. 93-36, filed on September 7, 1993.

[51] *Nondominant Filing Order*, 8 FCC Rcd at 6753, n.7.

[52] Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Erratum (released Aug. 31, 1993) (*Erratum*).

[53] 58 Fed. Reg. 48323 (Sept. 15, 1993).

[54] In fact, the notice of the *Erratum* contained in the *Federal Register* on September 15, 1993, *see* 58 Fed. Reg. 48323, reflected the rule neither as it was adopted in the *Nondominant Filing Order*, nor as it was amended by the *Erratum*.

[55] 5 U.S.C. §§ 551 *et seq.*

because the amendment to Section 43.51(a) adopted in this portion of the Order is editorial in nature.[56] We take this opportunity to implement the amendments made by the *Erratum* to Section 43.51(a) that were erroneously omitted from the *Federal Register* and the *Code of Federal Regulations*.

20. Finally, in this Order we also amend Section 43.51(b) to delete references in that subsection to forbearance, thereby conforming all of Section 43.51 with earlier court decisions invalidating the Commission's forbearance policy.[57] Further notice and comment by the Commission is unnecessary and not required under Section 553(b)(3)(B) of the APA[58] because such changes are purely ministerial and necessary to conform our written rules to the court's mandate in *MCI v. AT&T*.[59]

IV. CONCLUSION

21. In sum, we construe the court's decision in *Southwestern Bell v. FCC*, as invalidating only the provision of our rules that allows domestic nondominant common carriers to express tariffed rates in a manner of the carrier's choosing. We, therefore, eliminate that provision from our rules. On the basis of the extensive record developed in the *Nondominant Filing NPRM* and *Nondominant Filing Order*, we again conclude that the significantly streamlined tariffing requirements for nondominant common carriers adopted in the *Nondominant Filing Order* continue to serve the public interest by affording nondominant common carriers increased flexibility to meet their tariff filing obligations. We further conclude that retention of these streamlined procedures is consistent with the court's decision in *Southwestern Bell v. FCC*. Finally, for the reasons discussed above, we deny AdHoc's petition for partial reconsideration of the *Nondominant Filing Order* and dismiss the AT&T application for stay. Because no further purpose would be served by keeping CC Docket No. 93-36 open, we are therefore terminating this proceeding.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, that pursuant to Sections 1, 4(i), 4(j), 201-205, and 402(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205 and 402(h); Sections 61.20, 61.21, 61.22, 61.23, and 43.51 of the Commission's Rules and Regulations, 47 C.F.R. §§ 61.20, 61.21, 61.22, 61.23, and 43.51 ARE AMENDED as indicated above and set forth in the attached Appendix.

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[56] *See* 5 U.S.C. § 553(b)(3)(B).

[57] *MCI v. AT&T*, -- U.S. --, 114 S.Ct. 2223 (1994). *See also*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992).

[58] 5 U.S.C. § 553(b)(3)(B).

[59] *MCI v. AT&T*, -- U.S. --, 114 S.Ct. 2223 (1994).

23. IT IS FURTHER ORDERED that the amendments made in the attached Appendix will be effective 150 days after publication in the *Federal Register*.

24. IT IS FURTHER ORDERED that the petition for partial reconsideration filed September 22, 1993 by Ad Hoc Telecommunications Users Committee IS DENIED.

25. IT IS FURTHER ORDERED that the application for stay pending appellate review filed September 7, 1993 by American Telephone and Telegraph Company IS DISMISSED.

26. IT IS FURTHER ORDERED that the proceeding initiated in CC Docket No. 93-36 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Parts 43 and 61 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 43 - REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§43.51 Contracts and concessions

(a) Any communications common carrier that: is engaged in domestic communications and has not been classified as nondominant pursuant to §61.3 of the Commission's Rules, 47 C.F.R. § 61.3; or is engaged in foreign communications, and enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point; must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

* * * * *

(b) If the agreement referred to in this section is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier classified as nondominant, and therefore not subject to the provisions of this section, to submit the documents referenced herein.

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PART 61 - TARIFFS

3. The authority citation continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

4. In Section 61.22(b), the second sentence is removed.